

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 United States of America,

10 Plaintiff,

11 v.

12 David Allen Harbour,

13 Defendant.  
14

No. CR-19-00898-001-PHX-DLR

**ORDER**

15  
16 Pending before the Court is the Government's motion to strike Defendant David  
17 Allen Harbour's memorandum on judicial estoppel. (Docs. 751; 755.) The Court grants  
18 the motion.

19 Though motions to strike generally are disfavored, *Picurro v. Baird*, No. CV 09-  
20 00938-PHX-NVW, 2011 WL 4433954, at \*1 (D. Ariz. Sept. 23, 2011), LRCiv 7.2(m)(1)  
21 allows a party to move to strike "any part of a filing or submission on the ground that it is  
22 prohibited (or not authorized) by a statute, rule, or court order." And in this instance, the  
23 filing subject to the motion to strike was not authorized by statute, rule, or by the Court.

24 On June 6, 2023, the Court held oral argument regarding Harbour's motions for  
25 acquittal and new trial. (Docs. 648, 649, 749.) At the hearing, Defense counsel argued for  
26 the first time that the Government was estopped from arguing post-trial that a specific  
27 exhibit, Exhibit 516, was fraudulent based on the Government's statements about that  
28 exhibit at trial (Doc. 749 at 57-58.) When the Court asked Defense counsel for "any

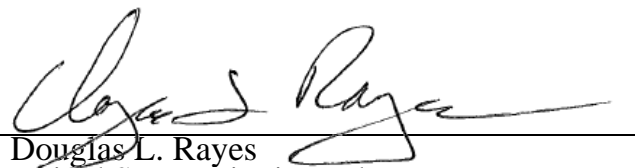
1 authority” for that proposition, Defense counsel did not have authority on hand. The  
2 Court then granted Defense counsel leave to “supplement on this very limited issue with  
3 five pages where you quote what it said in his argument and you have authority to me  
4 that he cannot now make a contrary argument in these motions.” (*Id.* at 58-59.)

5 A few days later, Defense counsel filed a memorandum that devoted a single  
6 paragraph to the estoppel issue. Nowhere in the memorandum did Defense counsel  
7 “quote what [the Government] said in its argument” about Exhibit 516. The rest of the  
8 five-page allotment was spent discussing “Continuing Scheme and Lifestyle,” “Turasky  
9 and Burg Expenses,” “Prior Admitted Prejudicial Evidence,” “Omissions,” and “Yes and  
10 No Answers”—arguments already raised in the fully briefed motions for acquittal and  
11 new trial. Even more, attached to the memorandum is a train of exhibits, many rehashing  
12 the questions posed by the Court in oral argument on the motions for acquittal and new  
13 trial.

14 This memorandum ranged far beyond the issue the Court asked Defense counsel to  
15 address. It was not authorized by statute or by rule. The Court also notes that the order  
16 resolving the motions for acquittal and new trial did not depend on resolving the estoppel  
17 issue. (*See* Doc. 757.)

18 **IT IS ORDERED** that the Government’s motion to strike Defendant’s  
19 Memorandum on Judicial Estoppel (Doc. 755) is **GRANTED**. Defendant’s  
20 Memorandum on Judicial Estoppel (Doc. 751) is **STRICKEN**.

21 Dated this 3rd day of July, 2023.

22  
23  
24   
25 Douglas L. Rayes  
26 United States District Judge  
27  
28